No. 83-916

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1983

UNITED STATES OF AMERICA, PETITIONER

v.

ALLAN WAYNE MORTON

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

BRIEF ON THE MERITS OF THE RESPONDENT ALLAN WAYNE MORTON

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CORRECTION OF THE QUESTION PRESENTED

Whether the United States Air Force may take the pay of one of its members and pay it over to such member's former wife on the basis of a void judgment of a state court, the judgment being void for lack of in personam jurisdiction over such member, when the Air Force knew the said state court's judgment was void before it first took such member's pay, and after taking such member's pay be immune from suit by the member against the Air Force for such member's military pay.

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SUMMARY OF ARGUMENT

This case is a claim brought against the United States (Air Force) to recover a military member's pay pursuant to 37 U.S.C. §204, et seq., and the Fifth Amendment to the Constitution of the United States. The defense of the Air Force is that 42 U.S.C. §659 authorizes it to take the military pay of one of its members on the basis of a void judgment even though the Air Force knew the judgment was void before it took the member's pay. Such a position would authorize the taking of property without due process of law and certainly was not the intent of Congress when it enacted 42 U.S.C. §659. The decisions of the Court of Claims (Claims Court) and of the United States Court of Appeals for the Federal Circuit, interpret 42 U.S.C.659 so that it meets not only its obvious intent but also

avoids constitutional difficulties.

1. The lower courts properly applied the law to the facts in this case, consistent with the policy of the United States and the statute.

That the Alabama judgment for alimony and child support upon which the garnishment writ was issued is void for lack of in personam jurisdiction over Col.Morton is not contradicted by the Air Force. It could not do so under the facts in this case. Congress in the amendments to 42 U.S.C. 659 enacted in 1977, which were intended to clarify the statute, made it clear that the immunity granted the government under the statute was a limited one. The Air Force, however, has lifted out of context, one phrase of the statute, "regular on its face" and based its primary defense on those words. Although those words have a legal meaning established

long before the enactment of this statute, the Air Force has redefined them for its convenience to mean that its immunity is absolute. This is contra to the terms of the statute and the law of statutory construction. However, even under the Air Force's erroneous definition, the Alabama court's judgment and writ were not regular on their face.

2. The definitions of terms set forth in 42 U.S.C. 659, when applied to the facts of this case, make the Air Force's withholding of Col. Morton's pay arbitrary and illegal. The Alabama court was not "a court of competent jurisdiction" because of the lack of in personam jurisdiction over Col. Morton. Because the Alabama judgment for alimony and child support was not a "judgment issued in accordance with applicable state law by a court of competent jurisdiction" (which is the definition given

to alimony and child support by 42 U.S.C. 662 (b) and (c)). The procedure in the Alabama court was not in accordance with Alabama law. Consequently, the pay that was withheld and paid to the Alabama court by the Air Force was not for alimony and child support. Additionally, the Court of Appeals said, these payments were not "legal obligations" under Section 659(a).

In view of the fact that the Air Force knew all these facts prior to taking his pay, its actions show a callous disregard for the rights of the service member. Nothing in this statute indicates other statutes and laws are to be ignored in order to achieve the purposes of this act. The Air Force's contention would bring about chaos in the law by giving legal effect to void judgments; it would deny constitutional rights by preventing service members from obtaining

a fair and effective hearing; it would overturn a long line of this court's cases; and it would encourage forum shopping for divorce courts.

The Air Force has failed to distinguish voidable judgments from void judgments. Consequently, its conclusions are in error.

3. The Comptroller General's opinion cannot be cited as authority for reversal of a court's decision on the same subject. Neither can regulations promulgated after a court's decision be used as authority to overrule that decision. Neither can regulations expand or take away from the statutes' clear words.

4. The Court of Appeals' decision places most of the burden of investigation and documentation upon the member and upon the counsel for the garnishors. The burden on the government is far less than that placed on a private garnishee, the

government being immune from suit solely on the basis of 42 U.S.C. 659 et seq., as amended. Further, insistence upon the Soldiers' and Sailors' Civil Relief Act being honored by the state court will remove most if not all the burden. "Administrative convenience" is not a shibboleth, the mere recitation of which dictates constitutionality." Frontiero v. Richardson 411 U.S.677 (1973).

5. Neither the federal courts, nor the government have been placed in the domestic relations business by the Court of Appeals' decision. Simply because 42 U.S.C. 659 et seq., as amended, requires the Air Force to make sure the state law is followed and the court entering the original judgment upon which the garnishment writ is issued had jurisdiction of the parties, does not place it in the domestic relations business.

This case involves only the legal relationship between Col.Morton and the United States Air Force. The Court of Claims has not required the government to intervene in the divorce case, nor to enjoin the suit, nor to modify that judgment in any way. The Court of Appeals' ruling has no effect whatsoever on the Alabama judgment. There is no other necessary party. Patricia Kay Morton could have been called by the Air Force as their witness, if in fact her testimony would have been any different from that of Col. Morton or his witnesses. The Air Force did not call her as a witness, neither in person, nor by deposition, nor by affidavit. Most of the evidence in the case was documentary, needing little evidence by way of testimony. The federal courts have ruled that they may not refuse to entertain suit simply because some facet of the suit involves intra family aspects. Cole v. Cole, 633 F.2d 1083,(4th Cir.1980).

6. The Air Forces contention that a judgment of a state court can be moved to any state and a garnishment writ brought on it is incorrect. Suit must be brought on a judgment when it is moved to another state and valid service of process made on the defendant in the state to which it is moved, thus bringing the judgment debtor before the court of the second state before a writ of garnishment can be brought in the second state.

The purpose of Congress in the enactment of 42 U.S.C. 659, et seq., as amended has been carried out by the Court of Appeals' ruling. It could not have been the intent of Congress to interpret a law so that it deprives a person of his constitutional rights.

7. The amicus has erred as to the facts of this case. Consequently, his arguments do not apply to this case. He has also cited cases that support Col.Morton's contentions.

ARGUMENT

The Court of Appeals' decision is consistent with the policy of the United States concerning the administration of military pay. The government's position supports the taking of military pay without due process of law. The military's Home of Record Statement does not refer to domicile; the Alabama judgment for alimony and child support is void. The Air Force's contention that the presumption of the proceedings being "regular on its face" is superior to actual knowledge is not valid.

1. This case was brought against the United States (Air Force) to recover a military member's pay pursuant to Title 37, Sec.204 et seq., United States Code and the Fifth Amendment to the Constitution of the United States. (Res.App.1a).(Pet.App. A-1a). It is well settled that the United States may not circumvent the unambiguous financial obligation which the law imposes on the United States to pay to a member of the Armed Services, his military pay, without valid, legal justification for doing so. Bell v. U.S., 366 U.S.393 (1961).

The strict rules regarding the sanctity of a military member's right to his military pay is a well settled principle of the law. Even in the extreme case of Otho Bell, who was a turn-coat prisoner-of-war during the hostilities in Korea in the 1950s, who showed utter disloyalty to his comrades and to his country, who consorted, fraternized, and cooperated with the enemy, sought favors for himself causing hardship to his fellow prisoners and who refused repatriation and went to Communist China after the hostilities ceased, the military service was required to pay him his military pay for the period he was a prisoner-of-war because he was not absent without leave or in any other status permitting involuntary withholding of pay. If the military services could withhold the pay of one of its members on <u>any</u> principle no matter how seemingly compelling, other than on a strict legal basis,

surely Otho Bell's case was one. It must be noted that the Congress in 1982 enacted legislation providing that the military may not even withhold a member's pay for a debt owed to the United States (for the most part over payments of allowances, claims for damage to household goods in shipment, etc.), unless it gives the member (a) 30 days written notice, (b) an opportunity to inspect the records of the alleged debt, (c) an opportunity to enter into a written agreement to establish a schedule for repayment and (d) an opportunity for a hearing before an impartial person (to include an Administrative Law Judge.) Debt Collection Act of 1982, 5 U.S.C., 5514. (Res.App.to Brief 1 a). The duty of any person administering the funds of another owes that other person the highest fidelity. The obligation of the military to its member concerning the military pay is even

greater because the exigencies of the military service may effectively prevent the member from monitoring such administration. Indeed, he shouldn't have to check.

The military service is liable for the arbitrary and capricious administration of a military member's pay. A claim for restoration of the pay that was due and unpaid to the military member results from such acts. Cherry v.U.S., 640 F.2d 1184 (1980); 697 F.2d 1043 (Fed.Circ.1983).

The Soldiers' and Sailors' Civil Relief Act, 50 U.S.C.A.§501 et seq., prevents any default judgment for the payment of money or property from being entered against a member of the Armed Services on active duty in the event any suit is allowed to go forward in such member's absence.

Added to all this, Congress enacted the Former Spouses Protection Act, 10 U.S.C. 1408, et seq.,which became effective on

February 1, 1983, (Res.App.to Brief 2 a). This Act provides that any court ordering payment of child support as defined in 42 U.S.C. 662 (b) and alimony as defined in 42 U.S.C. 662 (c), must be a court of competent jurisdiction; any judgment must be issued in accordance with the laws of the jurisdiction of that court; that the court order or other documents served with the court order, certify that the rights of the military member under the Soldier's and Sailor's Civil Relief Act of 1940 (50 U.S.C.A. §501 et seq.), were observed; that it must be issued by a court of competent jurisdiction; it must be legal in form and include nothing on its face that provides reasonable notice that it is issued without authority of law. The Act also stated that "a court may not treat the disposable retired or retainer pay of a member in the manner described unless the court has jurisdiction over the

member by reason of (a) his residence, other than because of military assignment, in the territorial jurisdiction of the court, (b) his domicile in the territorial jurisdiction of the court or (c) his consent to the jurisdiction of the court." Sec.1408C(4). (Res.App.to Brief 2 a). Had Congress had this Morton case before it, it could not have spoken more clearly to the issue.

From all this, exclusive of the Act in question in this case, we find the legal principles and the policies of the United States are that the military services must exercise the highest degree of care and fidelity to the military member in administering his pay and allowances.

Regardless of these well settled legal principles and laws and the policy they show, the Air Force's contention is that 42 U.S.C. 659 et seq., as amended, authorizes it to take the military pay of

one of its Air Force members on the basis of a void judgment, even though the Air Force knew the judgment was void before it took the member's pay.(1)

(1) The Air Force received the first writ of garnishment with a copy of the judgment attached on 27 December, 1976. On 30 December, 1976, Col. Morton notified the Air Force Accounting and Finance Center that the judgment was not served nor was he notified and that he was not domiciled in nor a resident of Alabama. (Pet.App.39a,¶6). On January 10, 1977, Col.Morton advised the Air Force that he had received service of process by mail. (Pet.App.38a,¶5). Despite this, the Air Force confessed indebtedness on 11 January, 1977, and withheld his pay and paid it over to Alabama. (Pet.App.39a,¶7).

By letter of 29 March, 1977, Col. Morton's present counsel forwarded to James R.Russell, Civilian Attorney-Advisor assigned to the Office of the Staff Judge Advocate, Air Force Accounting and Finance Center, Denver, Colorado 80279 (Pet.App.37a) a letter explaining why the Alabama judgment for alimony, custody and child support was void and enclosed a certified copy of the entire Alabama record which Mr. Russell in his affidavit refers to as documents, and which included the affidavit of non-residency of Col. Morton, executed by Patricia Kay Morton (Pet.App.39a,¶18). Attached to the letter were copies of cancelled checks drawn by Col. Morton to Patricia K.Morton proving he had paid her voluntarily.

In other words the government's position is that 42 U.S.C.659 et seq., as amended, authorizes their taking of the pay and allowances of a military member without due process of law and in spite of the fact that the government is aware that the taking was without due process of law when the taking occurred.(2)

(2) On June 1,1977, the said Attorney-Advisor for the Air Force wrote a letter to the U.S. Attorney in Birmingham, Alabama and the said Attorney-Advisor prepared an affidavit for this case in which he stated that the U.S.attorney advised that such service was sufficient pursuant to Rule 4:2, Alabama Rules of Civil Procedure. (Pet.App.40a). However, the said Air Force attorney, knowing the date of the certified mail he referred to in his affidavit was 1974 and not 1977, failed to point out this crucial fact to the U.S.Attorney.(See Res.App. to Brief 1a). Rule 4 of the Alabama Rules of Civil Procedure in effect in 1974,(Res.App.7a) when the suit was filed and substituted service was made, did not permit substituted service on a non-resident in a domestic case for any purpose except the termination of the marital status. This was changed in January 1977, by Rule 4:2 which requires, in order for Alabama to obtain in personam jurisdiction over the non-resident for purposes of alimony, child support and custody, that the parties had to have last lived together in Alabama and one spouse had to continue to live in Alabama or some wrong against the marriage had to have occurred in Alabama.(Res.App.to Brief 3a). The U.S. Attorney's reference to Rule 4:2 proved that he understood the time involved to be 1977 not 1974.(See Res.App.to Brief 5-7a). Cochran v. Cochran, 353 So.2d 805 (1978).

After the Air Force received the writ of garnishment in this case, Col. Morton put the Air Force on Notice that the Alabama proceedings were void. He did this before the Air Force withheld his pay. The Air Force withheld and paid his pay to Alabama in spite of his protestations and without investigation. After a letter from Col. Morton's counsel which enclosed the Alabama records, an Air Force Attorney-Advisor, whose duties are to review these garnishments, did decide to check into the matter by asking a U.S. Attorney in Alabama about it. However, he erroneously advised the U.S. Attorney that the Air Force records showed Col.Morton to be an Alabama domiciliary. This was the Air Force "Home of Record" document. Department of Defense regulations make it clear that the "Home of Record" document is used solely for the purpose of fixing travel and transportation allowances. (Pet.App.82a¶6(b)). It only refers to the place from which the

member entered the service and the Air Force cautions, in the "Home of Record" document, that it is not to be confused with "domicile" of the member. (Res.App. to Brief 7 a).

The Air Force does not argue in its Petition or Brief that the Alabama judgment for alimony and child support is not void. Indeed, such an argument would be difficult in the face of the facts in this case. Col. Morton was not personally served with process to bring him before the Alabama court (Pet. App.89(a)); he was not a domiciliary of Alabama when the suit was filed (Pet.App. 71a); he had no "minimum contacts" with Alabama when the suit was filed (Pet.App. 78a); there is no evidence Col.Morton committed any act against the marriage in Alabama (Pet.App.90a); and the Mortons last lived together in Virginia (Pet.App.85a); Alabama had no "long-arm" statute for

alimony and child support when the Alabama suit was filed (Pet.App.93a,94a), except of course the Uniform Reciprocal Enforcement of Support Act, and Col. Morton made no appearance of any kind in the Alabama divorce suit. (Pet.App.89a). To this must be added the facts that the Alabama suit was dismissed prior to judgment for lack of prosecution and the dismissal set aside without any Notice to Col.Morton, (Pet.App.89a), and that Col.Morton voluntarily paid alimony/child support payments to Patricia Kay Morton from the date of their separation until the garnishment of his pay began, (Pet.App.88a,89a). The initial garnishment was for $4,100.00 which amount Col. Morton could not have owed, assuming the Alabama court had had jurisdiction over him by virtue of the fact he had been voluntarily paying Mrs.Morton. The Air Force also knew all of this prior to the taking of Col.Morton's pay. (Pet.App.66a).

There was no affidavit filed among the Alabama suit papers concerning Col. Morton's military status, and no guardian ad litem was appointed for him in accordance with The Soldiers' and Sailors' Civil Relief Act, 50 U.S.C.A.§520. (Pet.App.89a).

The Air Force contends, however, that its actual knowledge of the fact that the judgment upon which the garnishment writ was predicated was void, is of less import in legal effect in the administration of 42 U.S.C. 659 et seq., as amended, than the presumption that the garnishment and judgment was "regular on its face". This is an absurd contention.

Garnishment is an ancilliary or auxiliary proceeding, growing out of and dependent on another original or primary action or proceeding. Accordingly, where the principal action is void, the garnishment is also void. 38 C.J.S. Garnishment, §2(4); Wilkinson v. Cohen, 57 So.2d 108, (Ala.1951); Laborde v.

Ubarri, 214 U.S.173,174(1909). A valid judgment against a defendant in the original suit is a prerequisite of the validity of a judgment against a garnishee. Wilkinson v. Cohen, (supra). A judgment, writ, order, and the like, cannot be regular on its face if the underpinnings of that judgment, the proceedings that support it, are void no matter what the judgment itself declares itself to be. 46 Am.Jur.2d,Judgments,§663; Armstrong v. Armstrong, 350 U.S.568 (1952); Vanderbilt v. Vanderbilt, 354 U.S.416 (1957). In Alabama, the state of the garnishment in the case at bar, the garnishee has a duty to see that there has been valid service of process upon the defendant in the original action (the divorce action in this case), and that a valid judgment has been entered. Southern Ry.Co. v. Ward, 26 So.234 (Ala.1898); Alabama G.S.R.Co.v.Chumley, 9 So.286 (1890); Louisville and N.R.Co.v. Nash, 23 So.825 (1897). This same duty is written into the

Code of Federal Regulations implementing 42 U.S.C.659 et seq., as amended (5 C.F.R. §581.102(f)). This is necessary to protect the serviceman who, because of the exigencies of the service, is not free to leave his military post to litigate a divorce case. Under the position espoused by the defendant if the member of the service didn't do just that, at the time the case was filed, his property would be taken without due process and contra to all the laws. The Air Force would have given it away no matter how void it knew the judgment to be. The statute 42 U.S.C.§659, et seq., as amended, which is intended to cure one wrong, would be perpetrating another wrong, the more serious because it is a danger to the rights created in our Constitution. The government contends that Col.Morton must return to Alabama and litigate this matter. In addition to being an exceptional problem to the military member, this court

summarily rejected such an argument in Armstrong v. Armstrong, (supra). The military member, contra to the civilian, is not free to move about physically wherever and whenever he chooses.

The Court of Appeals did not feel the need to address the issue of whether the writ and judgment were "regular on their face" (708 F.2d 680). The only reference in this regard was made by the Court of Claims (Claims Court) in its Findings of Fact that the writ was on a "regular form" used in Alabama. (Pet.App.90a).

The term "regular on its face" or its opposite, "void on its face", is a legal term of art having a definite meaning in the law. The "face" of a judgment or writ is not, as the Air Force contends, the last document filed in a cause, it is the entire record of the case. (Groth v. Ness, 260 N.W. 700 (N.D.1935). A judgment is "void on its face" when its invalidity appears upon

inspection of the judgment roll. Application of Behymer, 19 P.2d 829 (Calif.1933); Vaughn v. Vaughn, 100 So.2d 1 (Ala.1957). The Air Force's use of the term indicates it is defining "regular on its face" to mean only the last document in the file. The definition supplied by the Air Force is not calculated to weed out any void judgments. Under the Air Force's definition of "regular on its face" it would have to be said that when the Congress felt the need to clarify this Act, 42 U.S.C.§659 et.seq., in 1977, it was indulging in useless direction and definitions and doing a useless act. Nowhere on a writ of garnishment alone can it be determined that it was issued pursuant to legal process by a court of competent jurisdiction, as required by 42 U.S.C.662(e). (Pet.App.98a,99a).

It is necessary to look at the return of process in the original suit and

look at the state law to determine whether the process is legal and whether it comes from a court of competent jurisdiction. Nowhere on a garnishment writ alone can it be determined whether the decree, order or judgment was issued in accordance with applicable state laws by a court of competent jurisdiction so that it meets the definition of alimony and child support as is required by 42 U.S.C. 662 (b)&(c). (Res.App.3a-5a). Unless these definitions are met, the Air Force would be withholding the member's pay, and paying it over to the Alabama Court in this case, for something other than alimony and child support. Assuming, however, the Air Force's definition of "regular on its face" means only the writ received by them, in this case that writ showed the garnishment was not "regular". The writ served on the Air Force, included a copy of the divorce judgment which was attached, as it should

be. The divorce judgment, however, stated that the defendant had been "duly served" and failed to appear. (Pet.App.38a). Such language as "duly served" is ambiguous in an action for divorce because it fails to say duly served for what purpose. Divorce suits have been different in nature from other forms of action since 1942 when this Court decided the cases of Williams v. North Carolina I, 317 U.S. 287 (1942) and Williams v. North Carolina II, 325 U.S.226 (1945), in that they are divisible. That is, the court in a divorce suit may very well have jurisdiction to terminate the marital status if one party is domiciled in the state but have no jurisdiction whatsoever to award a money decree for alimony or child support. Therefore, even under the Air Force's definition of "regular on its face", the portion of the writ that was the judgment was ambiguous. This put the Air

Force on notice that a further check of the proceedings was necessary. In this case, however, the Air Force already knew the Alabama judgment was void.

The arbitrariness of the United States in the administration of Col.Morton's pay, is amply and repeatedly shown from the record.

2. Utilizing the definitions in 42 U.S.C. 659 et seq.,as amended, requires the Court of Appeals' decision to be upheld; immunity of the government is not absolute; intent of Congress was to insulate the government only when an order was voidable, not when it is void; support obligations are not debts until created by a court of competent jurisdiction; situs of debt is with creditor. Notice is not synonymous with service of process.

(a) The clear language used in 42 U.S.C. 659, effective January 1, 1975, stated that the obligations that could

be honored by the United States had to be "...legal obligations to provide child support or make alimony payments."(Emphasis added). The statute was initially silent as to the immunity of the government for wrongful and illegal taking of the property of a military member or employee. (Res.App.2a).

In 1975, the Department of Defense Pay Manual Section 70710. Garnishment of Pay for Enforcement of Child Support and Alimony Obligations, (Res.App.3a), made it clear to all military personnel that garnishment of a member's pay had to be based on an order by a court of competent jurisdiction. The Air Force cannot claim ignorance of its own Regulations, Department of Defense Regulations being binding on the Air Force.

Between the time of the initial enactment of 42 U.S.C.659 in 1975 and the amendment of it in 1977 there had already been at least one suit against the United

States concerning this statute, Popple v. U.S. 416 F.Supp.1227 (1976) and at least two more cases filed and ready for decision, Overman v. U.S. 563 F.2d 1287 (8th Cir.1977) and Calhoun v. U.S. 557 F.2d 401 (4th Cir. 1977). Congress had the opportunity to completely exempt the government from any liability by merely saying any order received by the government for garnishment of a member's pay will be honored by the government and there shall be no liability on the part of the government for honoring any order for alimony and child support. Congress did not do that. It added subsection (f) (Pet.App.98a) which is very clear that the United States shall enjoy immunity with respect to these payments "...made from moneys due or payable from the United States to any individual pursuant to legal process regular on its face, if such payment is made in accordance

with this section and the regulations issued to carry out this section." (Emphasis added). When Congress amended 42 U.S.C.659 in 1977, it also repeated and reiterated the phrase, "...legal obligations to provide child support or make alimony payments." (Emphasis added).(Pet.App.99a). It added Definitions in Section 662, (b) defining child support and (c) defining alimony. (Res.App.3a). The Congress again made it quite clear that the government may only honor "legal obligations", as a result of a "judgment issued in accordance with applicable State law by a court of competent jurisdiction." (Emphasis added). The Congress also defined "legal process" used in 42 U.S.C. 659 (a) in subsection (e) (Pet.App.98a-99a) as that process issuing from a court of competent jurisdiction.

The statute by its own terms defines what "alimony" and "child support" are, for

the purposes of this Act. No matter what other definitions there may be, in garnishment proceedings pursuant to this statute, we are limited to these definitions. Pursuant to 42 U.S.C.659 et seq., as amended, there is no "alimony" or "child support" unless it issues from a court of competent jurisdiction. The Act also requires that the alimony and child support be issued in accordance with applicable state law. 42 U.S.C. §662(e)(1). In order to insulate the government from liability, orders and decrees honored by the government must be from a court of competent jurisdiction and must be legal process regular on its face, issued from a court of competent jurisdiction and issued in accordance with applicable State law. The immunity of the United States for taking a member's pay is, therefore, by clear terms of the statute, a limited immunity. In stating very clearly in what situations the

United States could not be sued, Congress obviously rejected any contention that it could never be sued for its long established legal obligations to pay a service member his pay. The specific enumerations of exclusions from liability set forth in the statute indicate that no other immunity is granted. Ex Parte McCardle, 7 Wall.(74 U.S.) 509 (1869); Stephens v. Smith, 10 Wall.(77 U.S.) 321 (1870). The legislative history of the 1977 amendments to 42 U.S.C.659 made it quite clear that the amendments were to clarify the act. Section 501 of Public Law 95-30 contained the amendments. Public Law 95-30 was the Tax Reduction and Simplification Act of 1977. As introduced, it contained no provisions concerning garnishment H.R.Rep.3477 95th Cong. 1st Sess. 1977; S.Rep. 95-66 95th Cong. 1st Sess., 1977; 91 Stat. 126. Section 501 of the act was added to the amendments on the floor of the Senate

(125 Cong.Rec. 6722 April 29,1977) by Senator Nunn who said,

> "The intent of these amendments that I am introducing today will be to clarify the garnishment provisions to provide for administrative improvements and to aid in the evaluation of the program."

A general explanation was included in the Congressional Record, Part A., "Clarification of Garnishment Provisions" stated the object of Section 501 (the amendments to 42 U.S.C. 659) was to clarify existing law. (125 Cong. Rec.6722(supra)). The question thus arises why Congress felt the need to clarify 42 U.S.C.659 by these amendments if the government's position is correct; that is that even if the government knows the judgment of the State Court which issued the writ is void, the government owes no duty to its military member and is obligated to take his property and give it to the wife or former wife of such member upon receipt of

a copy of this void writ because it is on a "regular form" issued by the State Court. For such a position as that of the government, no interpretation or clarification by amendment of the statute to read that the government would not be liable when it honored a State Court Order if the writ was legal process regular on its face, issued by a court of competent jurisdiction pursuant to applicable State law. Those conditions set by Congress were intended to insulate the government from suit when it honored a "voidable" judgment as opposed to a "void" judgment, void because the Court issuing it had no jurisdiction over the defendant to enter such an order. The fact that the amendments to 42 U.S.C.659(f) fail to state that the government is totally, unequivocally and completely immune from liability for the taking of a military member's or its civilian employee's pay is not error or ommission on

the part of Congress. The amendment was clearly an attempt to make the statute, 42 U.S.C. 659, constitutional in its application by assuring that the military member or its employee is afforded due process of law. To accept the government's position is to license the denial of due process of law by the United States. No such intent should or could be attributed to the Congress. The Illinois Supreme Court in Herb v. Pitcairn, (384 Ill.237,51 N.E.2d 277,280 (Ill.S.C.1943)) explains the distinction between "void" and "voidable" judgments as follows:

> "It is the element of jurisdiction that differentiates a void from a voidable judgment; both the subject matter and the parties must be before the court, and jurisdiction of the one without the other will not suffice; the two must concur or the judgment will be void in any case in which the court assumes to act. Rabbitt v. Weber & Co., 297 Ill.491, 130 N.E.787. And we have further held that even a court of general jurisdiction has no power to do any act or render any judgment affecting persons or property, unless the particular act or judgment is

> brought within its jurisdiction according to law. People ex rel. Brundage v. Righeimer, 298 Ill. 611, 132 N.E.229. These are general principles upon which substantially all courts are in agreement."

Although Alabama had long-armed statutes based on torts committed in Alabama and actions arising from doing business in Alabama, the Alabama Rules of Civil Procedure Rule 4, Process (C)(1)(B)(1973)(Res.App.5a), permitted substituted service of process (by mail) on a non-resident of Alabama for divorce only. When a statute says "divorce" and does not include the terms alimony and child support, process pursuant to such a statute is limited to termination of status and does not permit in personam judgments based on such process. May v. Anderson, 345 U.S. 528 (1953). As previously noted, divorce has long been severable from alimony, custody and child support. Alabama had no long-arm statute for alimony and child support in 1974. (Pet.App.93a¶31-94a). The

Alabama judgment would not have been valid even under the long-arm statute that became effective in 1977. Alabama Rules of Civil Procedure, Rule 4.B(H) required that the parties have last lived in the marital relationship in Alabama and one party to have continued to live in Alabama in order for the court to exercise jurisdiction over a non-resident and Rule 4:B(I) required that a wrong had to be committed in Alabama against the marital relationship for the court to exercise such jurisdiction. These are not the facts in ths instant case.

None of the requirements of 42 U.S.C. 659 et seq., as amended, so that the Air Force is insulated from liability, exist in this case. It is not immune from suit for military pay if only one of these requirements is missing, much less when all of them are missing.

The Air Force argues from both sides of the coin. It argues it is under

compulsion to withhold Col.Morton's pay and pay it into the Alabama Court or be subject to contempt proceedings and it would be subject to default judgments if it failed to honor a state court writ. On the other hand, the Air Force has argued since the inception of this suit that 42 U.S.C. 659 et seq., as amended, did not grant a cause of action against the government. Cunningham v. Department of the Navy, 455 F.Supp.1370 (D.C.Conn.1978); Popple v. U.S., 416 F.Supp. 1227 (D.C.N.Y.1976); Snapp v. U.S.Postal Service - Texarkana, 664 F.2d 1329 (4th Cir. 1982). Col. Morton has never denied that contention. Col. Morton's cause of action in this suit was not based on 42 U.S.C.659, but was an action to recover his military pay pursuant to 37 U.S.C.204, et seq.

It is the subject matter of the Petition, Complaint, Declaration, Motion for Judgment, or whatever it may be called

in the various courts that determines the jurisdiction of the court over the subject matter of the lawsuit and not the subject matter of the defense. Louisville & Nashville R.R. v. Mottley, 211 U.S. 149 (1908).

In any event, the Air Force is immune from contempt proceedings, default judgments and the like in state courts, except for negligence acts that may be brought under the Federal Tort Claims Act, 28 U.S.C. A. § 1346. To refuse to honor a writ of garnishment because the state court proceedings do not conform to the requirements of 42 U.S.C. 662 (e) (1), will not create legal difficulties for the Air Force.

The Air Force argues that where a defendant has been given notice by the garnishee this satisfies the due process requirement because such a defendant will have an opportunity to defend himself in

the attachment suit and cites Harris v. Balk, 198 U.S. 215 (1905). There is a distinction however, between the attachment of a debt that exists before the necessity of a court judgment to create it and alimony and child support obligations which do not exist until they are created by a court that has in personam jurisdiction over a defendant. Until a court of competent jurisdiction rules that a defendant is obligated to make alimony and child support payments, until such a court fixes the amount of such alimony and child support, and until such a defendant is in arrears in the orders of a court of competent jurisdiction, there is no debt to be condemned. The principle that the Air Force cites does not apply when there is no debt.

The other principle of Harris v. Balk, (supra) that the intangible debt may be attached in a state in which the creditor

has no minimun contacts has been overruled by this court in Shaffer v. Heitner, 433 U.S. 186 (1977). Under Alabama law, the situs of the debt has always followed the creditor, not the debtor. Louisville and Nashville Ry. Co. v. Nash, (supra). This court has also found the situs of the debt to be where the creditor is. Estin v. Estin, 334 U.S. 541 (1948). It is logical that the situs of a debt be with the creditor because the creditor owns the cause of action for the debt. The Air Force's argument that the Alabama court had both the subject matter and personal jurisdiction in the suit by Patricia Kay Morton against the United States is erroneous. The debt (subject matter) owed by the United States to Col. Morton was not located in Alabama. It was located where Col. Morton was,in Alaska.

The Air Force acknowledges that

state courts have held garnishees liable to reimbursement to the principal debtor where the underlying judgment was void and acknowledges Alabama is one of the those states. Lousiville & Nashville R.R. Co. v. Nash, (supra). But, it argues that this is because the principal defendant had been given no actual notice of the underlying action. The Air Force's position is that "service of process" and "notice" are synonymous. This is erroneous. Knowledge of the pendency of a suit against a defendant does not give the court in which the suit is pending jurisdiction over the defendant. In the Alabama case of Partlow v. Partlow, 20 So. 2d 517 (Ala. 1945) the court said, "The mere fact that the defendant (non-resident) has actual knowledge or notice of the institution of the proceedings against him is not sufficient to give the court jurisdiction."

It is essential to the proper renditon of a judgment in personam that the Court have jurisdiction of the parties, even though such parties have knowledge as distinguished from notice, of the action, and, indeed, even though they are present at the trial. 46 Am. Jur. 2d Judgments, Sec. 25 p. 330. Minton v. First National Exchange Bank of Virginia, 145 S.E. 2d 139 (Va. 1935). National Metal Co. v. Greene Corsal Copper Co., 89 P.535, (1907). Strode v. Strode, 6 Idaho 67, 52 P.161 (1895); Lee v. Indep. School Dist., 149 Iowa 345, 128 N.W. 533 (1910); Beaufort County v. Mayo, 207 N.C. 211, 176 S.E. 753 (1934); Smith v. Smith, 159 Tenn. 36, 15 S.W. 2d 747; Greenwood v. Furr 251 S.W. 332 (Tex.1923).

"A personal judgment rendered without such jurisdiction is in violation of the due process clause of the United States

Constitution and is not merely voidable but is void." (Emphasis added). 46 Am. Jur. 2d Judgments § 25 (supra). The citations for this proposition are too numerous to quote but the case of Hess v. Pawloski, 274 U.S. 352, 71 L.Ed.1091(1927), 47 S.Ct. 632, accurately sets forth the law. Clearly knowledge is not a legal substitute for service of process and cannot give a Court in personam jurisdiction over a person. Estin v. Estin (supra); Kreiger v. Kreiger 334 U.S. 555 (1948); Armstrong v. Armstrong (supra); Vanderbilt v. Vanderbilt (supra). It is the lack of proper service of process that makes the judgment void.

Had there been legal service of process on Col. Morton in the divorce suit, it would have given the Alabama Court continuing jurisdiction over him to enforce the court's judgment by garnishment on the strength of mere notice to him prior to

the garnishment. Michigan Trust Co. v. Ferry, 228 U.S. 346 (1913); Sheffield v. Sheffield, 148 S.E. 2d 771 (S.C.Va.1966); Orrox Corp. v. Orr, 364 So. 2d 1170 (Ala. 1978). Garnishment being only ancilliary to the judgment, the jurisdiction continues.

(b) Many state court statutes are cited by the Air Force which provide generally the same as Alabama's, that "... the judgment condemning the debt, mohey or effects to the satisfaction of the plaintiff's demand is conclusive as between the garnishee and the defendant to the extent of such judgment, unless the defendant prosecutes to effect an appeal from such judgment." Alabama Code Sec. 6.6-461 (1977). This statute, and those like it are predicated upon the fact that the court issuing the original judgment had jurisdiction of the person and the subject matter. Otherwise, these statutes would

be authorizing the taking of property without due process of law. Jurisdiction is the threshold question of every cause of action and the court must have jurisdiction of both. "A judgment rendered without such jurisdiction is a violation of the due process clause of the United States Constitution and is not merely voidable but void." 46 Am. Jur 2d Judgments § 25 (supra). The courts are agreed that if the judgment in a garnishment proceeding is void because of lack of either subject matter jurisdiction or jurisdiction over the defendant, payment by a garnishee is no protection to him against a subsequent action by his creditors to recover the debt. 49 A.L.R. 1411 Annotation-Garnishment-Void-Protection, which cites Louisville & Nashville R.R. Co. v. Nash, (supra) and Southern Ry. Co. v. Ward, 26 So. 234 (Ala. 1898), 38 C.J.S. Garnishment, 293 (e). The Alabama Code § 6-6-461 and other

similar statutes apply to voidable judgments where the irregularity does not effect the jurisdiction of the court. They do not apply when the judgment is void. To interpret these statutes as applying when the original judgment is void for want of jurisdiction over the judgment debtor would indeed make these statutes constitutionally objectionable, particularly, as in this case, if the debt is contingent upon the judgment creating it. The Air Force errs in that it fails to distinguish between a voidable judgment which must be set aside before it is void and a void judgment which is ipso facto void and requires no action to set it aside. 46 Am.Jur.2d,Judgments §49. Thus, an argument based on the need for relief from a void judgment is inappropriate. A voidable judgment is one in which the defect does not affect jurisdiction. A void judgment is one issued by a court without jurisdiction of subject matter or a party. Lacking

either, the court is not a court of competent jurisdiction. [The Air Forces' citation 1 New Restatement (Second) of Judgments § 16, Comment C 146 (1982) is irrevelant because it does not refer to judgments void ab initio but to reversed judgments, etc.]

In O'Toole v. Helio Products Inc., 149 N. E. 2d 795 (C.A.Ill.,1958) the court in holding that the garnishee has a duty to inquire into the validity of the judgment upon which the garnishment proceedings are based, also held the garnishee is not protected in making payments pursuant to the garnishment writ if the original judgment against the principal debtor is void for want of jurisdiction over the judgment debtors. The Air Force says this is the only case it has found to this effect. Col. Morton's counsel agrees. Cases of judgments that are void for lack of jurisdiction over

a party defendant are indeed rare. Since the enactment of 42 U.S.C. 659, there have been only a handful of cases even alleging such.

One of these cases alleging lack of jurisdiction in the original court was the case of Calhoun v. U.S.(supra). The Air Force states that Calhoun is in direct conflict with the case at bar. In addition to the distinction between that case and the instant one made by the Court of Appeals that Calhoun was decided prior to the clarifying amendments to 42 U. S. C. 659, Mr. Calhoun failed to give the Navy notice of any invalidity of the service of process on him prior to the time the Navy garnished his pay. Further, he never informed the District Court as to where he was in fact domiciled. California had a long-arm statute about which that Court of Appeals said the face of the judgment shows that ser-

vice of process was had in accordance with California Code of Civil Procedure, Sec. 415.40. The Fourth Circuit Court of Appeals looked into the matter of the original service of process. The cases of Cunningham v. Dept. of the Navy, 455 F. Supp. 1370, (Dist. Conn. 1978); Popple v. United States (supra); and Snapp v. U. S. Postal Service-Texarkana (supra), relied on by the Air Force for its position as to the effect of 42 U. S. C. 659 et. seq. as amended, were cases alleging a cause of action pursuant to the said statute. The statute did not create a cause of action. Overman v. U. S. (supra) was for an injunction alleging fraud in the procurement of the original judgment. In those cases the Court had jurisdiction of the parties and the subject matter in the underlying suit so that any defect in such a cause would make the judgment voidable, not void. In Jizmerjian v.

Dept. of the Air Force, 457 F. Supp. 820 (D.C. S. C. 1978) aff'd. 607 F. 2d 1001 (4th Cir. 1979), cert. den. 444 U. S. 1082, 1980), Mr. Jizmerjian accepted service of process in the Arizona court. In Rush v. U. S. Agency of Int. Dev. (706 F. 2d 1229 (D. C. Cir. 1983) (this court denied certiorari, No. 83-382, Jan 9, 1984) Mr. Rush actually brought the action himself in the state court. In each of these cases the parties were both before the court which issued the original judgment. Each had an opportunity to contest jurisdiction and he failed to do so. Therefore, the matter of jurisdiction became res judicata. Johnson v. Muelberger, 340 U. S. 581 (1951); Sherrer v. Sherrer, 334 U. S. 343 (1948) These cases are all distinguishable from the case at bar.

The litigation over this garnishment act has been exceedingly minimal. Such

cases will become even less as lawyers and judges become more familiar with what is required of them in order to comply with federal requirements.

The Air Forces' arguments that the garnishee under this act is a mere stakeholder under this act pales in view of the nearly seven years of litigation in this cause when all it had to do if it thought it was a mere stakeholder was to interplead the money. It knew better and it fully understands what must occur in order to make the government immune from liability.

This Act is a good one. The manner in which it is administered, however, must not be allowed to deprive anyone of their constitutional rights.

The Court of Appeals was correct in holding that a court should construe legislative enactments to avoid constitutional difficulty if possible. U. S. v. Clark, 454 U. S. 555 (1980); U. S. v. Harris, 347

U. S. 612, 618 (1954); Blasecki v. City of Durham, 456 F. 2d 87, cert.den.409 U. S. 912 (1972). Certainly, we do not wish to throw the baby out with the bath water, when all we need is to clean the tub.

3. The Comptroller General's opinion is not controlling; later enacted agency regulations cannot be relied upon to reverse a court decision; the court decision does not require payment to Col. Morton twice.

The government refers to a decision of the Comptroller General dated 2 February, 1982 (B-203668 - Matter of Technical Sergeant Harry E. Mathews, (U.S.A.F.). (Pet.App.F.). The Comptroller General refused to allow Sergeant Mathews to be reimbursed the amounts that had been taken from his pay between the dates that an ex parte judgment had been rendered against him in Florida and the date that the Florida court ordered the garnishment set aside. The only basis for

disallowing his claim was that the documents received by the Air Force Finance Center were "regular on their face". At no place in the opinion does the Comptroller General, who although basically a financial administrative officer has certain "quasi-judicial" responsibilities when he rules on requests of doubtful expenditures presented to him by finance officers, mention the basic legal issues in these cases. That is, was the writ valid legal process from a court of competent jurisdiction? The Comptroller General, like the Air Force, merely looked at the garnishment order and seeing the word "court" pronounced it "valid on its face".

One court commented on the weight to be given to opinions of the Comptroller General in Alexander v. FERC 609 F. 2d 543, 546 U. S. Court of App. D. C. 1979.

"The court disagrees with the petitioner's assertion that it should give weight to opinions of the Comptroller General concerning interagency transfers. Questions on review concerning the authority of the F.E.R.C. are for the court to decide and this responsibility should not be abdicated to the Comptroller General."

The Comptroller General's decision, it is noted, was decided after the Court of Claims had decided this case, Morton v. U.S., decided December 14, 1981, (Pet.App.62a). The Comptroller General completely ignores the opinion of the Court of Claims where an ample discussion of court of competent jurisdiction appears. Administrative agencies, such as the General Accounting Office, are bound by decisions of the Court of Claims as well as all other Federal Courts. The legal conclusions of the Comptroller General are entitled to no weight in this case in

the face of a contra decision of the Court of Claims. The facts in Mathews, do serve to point out the difficulties of a military member who is not present to litigate.

After the initial decision was reached by the Court of Claims on December 14, 1981, later promulgated amendments in regulations cannot have any effect on the decision of the court. The Court of Claims' decision, although not final as to the amount of Col. Morton's pay to be paid to him, was final as to the question of the government's liability to him for the pay. Retroactive laws and regulations promulgated after a court decision is final would be legislative encroachment upon judicial powers. Since legislative enactments and regulations which would have the effect of rendering court judgments ineffective, cannot be applied retroactively because it would be direct legislative or executive reversal

of a court decision and such is per se objectionable. Sutherland Statutory Construction IV ed. C. Dallas Sands, Vol.2 (1972) 1983 pocket supplement, §41.08.

It was obviously an attempt by the government to overturn the decision in this case when the government promulgated a new set of regulations which were published in the Federal Register, Vol.48, No.110, Tuesday, June 7, 1983. The said publication stated: "This revision expressly provides that agencies will not be required to ascertain whether the court or other authority which issued the garnishment order had obtained personal jurisdiction over the obligor prior to its issuance of the order." And, "Two Federal agencies submitted comments concerning the amendment to 5 CFR 581.305(f), which state that when a governmental entity receives legal process that appears to conform to the laws of the jurisdiction from which it was issued, the entity shall not

be required to ascertain whether the authority which issued legal process had obtained personal jurisdiction over the obligor. The amendment is consistent with the position that the government has taken in litigation concerning the issue."

Legislation may not be enacted by an administrative agency under the guise of its exercise of the power to make rules and regulations by issuing a rule or regulation which is inconsistent or out of harmony with or which alters, adds to, extends or enlarges, subverts, or impairs, limits or restricts the act being administered. 1 Am.Jur.2d Administrative Law, §132. The 1983 amendments to 5 C.F.R.581, promulgated after the Court of Claims' decision, attempts to insulate the government from all liability when such is in direct conflict with 42 U.S.C. 659 et seq., as amended. The statute is clear that unless the judgment for alimony

and child support is in conformity with the laws of the state which renders the judgment, it is not alimony and child support. In order to determine whether the judgment conforms to local state law, the government has to look into it, at least where it is put on notice of the defect. Otherwise, the government is paying out the pay of its employees for purposes other than child support and alimony. The government has attempted to expand the statute on its immunity and impair the right of the employee or member to his pay.

The Air Force contends it should not have to pay twice. It's not paying Col. Morton twice because it never paid Col. Morton the first time. There was no valid debt for alimony and child support due from him to Patricia Kay Morton and, therefore, the Air Force has not discharged an obligation of Col. Morton's which is what

occurred in The City of New Bedford, 20 Fed. 57 (1884). That case is distinguishable in that there was a pre-existing debt which was discharged by the garnishee. However, the legality of the proceedings could not withstand todays legal scrutiny.

The Air Force is required to make payment to a party legally due the money even if it has previously paid the money to someone else. Howell v. U.S. 195 F.Supp. 597 (1958). If the Air Force has been arbitrary and capricious in the administration of a military member's pay and pays it to the wrong party, it must pay the member his pay. Cherry v. U.S., (supra).

4. The Court of Appeals' decision does not impose on the government greater liability than that on a private garnishee; the exposure of the government is de minimis.

It is stated by the Air Force that the Court of Appeals' decision would impose on the government far greater liability and responsibility for legal investigation, analysis, and litigation than is borne by private garnishees. This is incorrect. The government, like any other Alabama garnishee, has a duty to assert all proper defenses of its creditor of which the defendant has knowledge. (6 Am.Jur.2d Attachment and Garnishment, Sec. 357 and Stewart v. Northern

Assurance Co., 32 S.E. 218 (W.Va. 1898). The government had knowledge of the invalidity of the judgment in the case at bar. However, in order to afford the military member the same protection that a private garnishee affords its employer by asserting such defenses in the litigation, the Air Force is not required to do anything if it does not choose to do so. Because 42 U.S.C. 659 and its amendment created no cause of action against the government, it can merely refuse to honor any garnishment that does not conform to the terms of the statute and such will not subject it to liability. Consequently, the Court of Appeals' decision imposes much less liability and litigation on the government than a private garnishee.

Under the Court of Appeals' ruling the government would not be challenging a state court's order. The Court of Appeals'

ruling has absolutely no effect on the state court's order. It doesn't change it in any way. It merely says to the plaintiff in the state courts "seek your collection procedures in another manner where the service member will have an opportunity to be heard and challenge the court order", if there is a substantial claim of a jurisdictional defect. It does not require the government to intervene in the underlying litigation. Indeed, the government does not know of such litigation until the underlying action is concluded. The government is not required to take sides in the underlying litigation as the Air Force alleges. It should not take sides at any time. The Court of Appeals' decision only requires that the government uphold the federal law and administer the pay of a military member in accordance with that law. The Court of Appeals' decision actually relieved the

government of much of the burden that a private garnishee encounters when the original judgment on which the garnishment is based is void. The Court of Appeals' decision places the burden on the military member to notify the government of the lack of jurisdiction of the state court before the government pays over the member's pay. It puts the burden on the plaintiff's lawyers in the state court to follow the law.(3)

The government is in a far superior position under the Court of Appeals' decision than is a private garnishee in that the government is blessed, or cursed as the case may be, with in excess of 67,500 attorneys in its employ. See Hearings on Equal Access to Justice Act, H.R.Rep.96-1005, Part I, at page 8 on 28 U.S.C. §2412.

(3) Had the Alabama lawyer followed the mandates of the Soldiers' and Sailors' Civil Relief Act and a guardian ad litem had been appointed for Col.Morton, the great probability is that this case would not have been necessary.

Those include those Air Force Judge Advocates, like the one at Elmendorf Air Force Base, Alaska, who advised Col.Morton, through the Air Force's legal assistance program, that the Alabama Court's decision was void for lack of personal jurisdiction over Col. Morton (Res.App.to Brief 10 a). The Air Force Accounting and Finance Center in Denver, has an entire staff of attorneys, one being the attorney-advisor who stated that his principal duty was to review the legality of state garnishments served on the Air Force. The question arises as to why those attorneys are needed if the Air Force owed no duty to its member and was only a stakeholder? Any clerk could routinely confess judgment to a state court. The Air Force knew it had legal responsibilities in administering this act in spite of the fact that such is denied.

In order to fully comply with the

Court of Appeals' decision, all that is needed after the Air Force has been notified of the jurisdictional defect, is for the Air Force to require the garnishor's attorney to submit two additional authenticated sheets of paper, one showing the return of the process and two, a copy of the state law concerning process. The military can require its members to set forth their domicile on the finance records and put the burden on the member to keep it correct. The government can require its member or employee to submit evidence of the member's contention. If these facts are not conclusive, it can interplead the funds. It certainly can demand that the mandates of the Soldiers' and Sailors' Civil Relief Act (supra) be followed. This will eliminate most problems.

Almost all the states have now enacted a form of long-armed statute for alimony,

custody and child support based on the last place the parties had their marital abode as husband and wife. This information is known to the military or can be documented by the member. Such evidence is usually in the Air Force files. Determining these minimum contacts presents much less of a problem to the government than to a private employer.

In any event, the government no longer has a choice in cases of a retired member or member on retainer pay. It is now mandatory that the Air Force, pursuant to said 10 U.S.C.1408, Former Spouses Protection Act, determine all the facts that 42 U.S.C.659, et seq., as amended, requires. That is, it must determine whether the court was a court of competent jurisdiction; whether the final decree of divorce was issued in accordance with the laws of the jurisdiction of that court and whether the order and other documents served with the court order

certify that the rights of the member under the Soldiers' and Sailors' Civil Relief Act (supra) were observed. It is additionally required to determine, among other things, whether the court has jurisdiction over the member by reason of his residence, other than because of military assignment in all cases brought pursuant to 10 U.S.C.1408. The machinery required to make those determinations can certainly make the determinations required by the Court of Appeals' decision. This is particularly true when the percentage of ex-parte orders, not based on a separation and property settlement agreement, is minute. As a result of what was referred to in hearings before the enactment of this statute as a drastic departure from anything that existed in the past, one only has to look at the very small number of cases that have arisen concerning the garnishment of federal pay

as compared to the 13,000 garnishments the Air Force maintains exist for servicemen alone. (Pet.App.19).

5. The Court of Appeals' decision does not place the government nor the federal courts in the domestic relations business. Congress put the federal government in the garnishment business.

The Air Force says that the Court of Appeals' decision places the Federal Courts in the business of domestic relations. The Congress of the United States enacted this legislation and it put the federal government in the business of garnishing pay for alimony and child support out of which arises this military pay claim. Congress was indeed cognizant of such claims and that is one of the reasons for the amendment of 42 U.S.C. 659. The federal courts are not called upon to award divorces, make alimony, custody and child support rulings nor to modify a

state court's ruling on these matters. The validity of a garnishment is an issue that arises from the domestic case, it is not a domestic case itself. The federal courts have been called upon since very early on, to make decisions of what is alimony and what is not alimony in bankruptcy proceedings, even when the term alimony is used in the state court judgment, order, or decree. Wetmore v. Markoe, 196 U.S. 68 (1904); In re Knuppenburg, et al, 422 F. Supp. 274 (Mich 1976); In re Albin 591 F. 2d 94 and, indeed, to determine the validity of marriages, Norris v. Norris, 324 F.2d 826, (9th Circ.1963). Such determination under a federal statute does not put the federal courts in the business of domestic relations. The federal courts are as adept at determining these questions as the state courts. The federal courts are also hearing cases arising from parental kidnapping and

child concealment between spouses and former spouses. Kajtazi v. Kajtazi, 488 F.Supp. 15 (E.D.N.Y.1978); Accord v. Parsons, 551 F. Supp. 115 (W.D.Va1982); Bennett v. Bennett, 682 F.2d 1039 (D.C.Cir.1982); Lloyd v. Loeffler, 539 F.Supp.998 (D.C.Wisc.1982); Wasserman v. Wasserman, 671 F.2d 832 (4th Cir.1982); cert den. 103 S.ct. 372 (1983). These federal courts did not consider themselves in the domestic relations business. In Wasserman the court restated the wording in Cole v. Cole, 633 F.2d 1083 (4th Cir.1980), and said at page 834 of 671 F.2d:

> "A district court may not simply avoid all diversity cases having intra family aspects. Rather it must consider the exact nature of the rights asserted or the breaks alleged... So long as diversity jurisdictin endures, federal courts cannot shirk the inconvenience of sometimes trading in wares from the foul rag-and-bone shop of the heart."

The Court of Appeals here looked at the nature of the right asserted, the claim for

military pay. The fact that it arose from a garnishment based on a claim for alimony and child support does not make it a domestic relations case nor put the court in the domestic relations business.

6. Domestication of a foreign decree requires in personam jurisdiction over a defendant; the purposes of 42 U.S.C.659 are supported by the Court of Appeals' decision and in accord with congressional intent.

The Air Force further contends that if Patricia K. Morton had obtained her divorce in Virginia, she could have filed a garnishment action on it in Alabama and then the term "Legal process *** issued by *** a court of competent jurisdiction" would refer to the Alabama proceedings not to the prior Virginia proceedings. The Air Force is operating under a false concept as to how these procedures work. One cannot

bring a garnishment proceeding in a state different from the state where the judgment upon which the garnishment is based was granted, without first domesticating the judgment. It is true all states must give full faith and credit to a valid judgment of a sister state but the procedure for doing that requires that a new law suit be filed for such purpose in the state where the judgment is going to be domesticated. In personam service of process in such new law suit must be made on the defendant in the new cause to domesticate the foreign decree. 47 Am.Jur.2d, Judgments, §930. This being the case, the defendant, when legally served in the domestication suit, can raise jurisdictional questions concerning the original judgment as well as claim other defenses in the forum which is foreign to the state of the judgment. Thus, any jurisdictional problem that there may be

in the original judgment becomes res judicata, if not raised in the latter proceedings. Sherrer v. Sherrer, (supra). The underpinnings of a garnishment from a state, other than that from which the original judgment was entered, also must be from a court of competent jurisdiction.

Contrary to the Air Force's argument that the majority's opinion destroys the intended purposes of 42 U.S.C. 659 et seq., the majority decision applies the statute so that it is not constitutionally suspect by an interpretation that condones the taking of property without due process of law. Such an application is in accord with the intent of the 1977 amendment to the statute.

7. Amicus has misunderstood the facts of this case; URESA is a good law capable of producing excellent results and at the same time treating both parties fairly.

The amicus has misunderstood the facts in this case. First, he cites Associated Oil Co. v. Mullin, 294 P.421 (1930) for the proposition that neither the parties nor their privies, not strangers, can attack a judgment of a domestic court of record on jurisdictional grounds unless the want of jurisdiction appears on the face of the record. He concludes that the appropriateness of this suit is questionable. He is apparently unaware that the purported service in the Morton suit shows that Col. Morton was a non-resident of Alabama. Alabama having no long-arm statute for alimony and child support claims at that time, the jurisdictional defect appears on the record. Interestingly enough, the

California Court in using the term "court of record" lends corroboration to Col. Morton's position that "court of competent jurisdiction" means jurisdiction of the parties as well as the subject matter because if Congress had meant "court of record", that court which has subject matter jurisdiction, it would have said so.

Second, although the Air Force concedes the Alabama judgment was void for alimony and child support, the amicus differs and argues that after the date of the service of process on September 17, 1974, it doesn't matter what Col. Morton did. The amicus was unaware that Col. Morton had the intent to be domiciled in Alaska in May of 1974 and he was in Alaska in May of 1974 and had contracted to buy a home there.

Third, he argues that Col.Morton told the Air Force he was an Alabamian so he could avoid the expense in moving his wife

and children to Alabama. Col.Morton never told the Air Force he was an Alabamian. (Pet.App.27 a). Col. Morton was not obligated to move Patricia Kay Morton anywhere. Col. Morton merely permitted her to use his moving benefit. They were still married. Patricia Kay Morton unilaterally left Col. Morton in Virginia in the marital home where he remained for nearly nine months. She refused to accompany him to Alaska. (Pet.App. 11 a). Col.Morton didn't "ship" Patricia Kay Morton anywhere.

Fourth, and most grievous, is the amicus' statement that "...Col.Morton did not simply comply with one of those civilities of a divorce too often observed in the breach, visitation." The minor Morton child was living with Col. Morton in Alaska. (See Res.App.to Brief 9 a). Apparently the amicus also does not think children go to the visiting parent's home instead of

visiting parent going to the child's home. Such assumption as the amicus made is erroneous.

Fifth, Col. Morton never anticipated that his wife or the state of Alabama would support his children. Col.Morton voluntarily provided support for his children in an amount that had been agreed upon by the Mortons. Col.Morton provided support when he had no legal obligation to do so.

Sixth, there is no evidence that Col. Morton's conduct forced Patricia Kay Morton to leave Col. Morton. She didn't wish to live with him in Alaska. (Pet.App. 11 a). Too, the doors of the Virginia court were open to her for almost nine months after she left Col.Morton prior to his leaving. See Section 20-79 of 1950 Code of Virginia, as amended. (Res.App. 10 a). She chose not to use them.

Seventh, the amicus' position that a

fair forum is based on the economic circumstances of the parties has no application to the fact in this case. If Patricia Kay Morton had no funds, it seems absurd to say she would have moved to Alabama and only begun proceedings a year later when she could have gone into the Virginia Courts for immediate funds in either a pendente lite hearing in a divorce suit or a suit for separate maintenance.

Eighth, the amicus statement that Col. Morton couldn't have voluntarily paid Patricia Kay Morton because the garnishment is based on an order for that amount, is tantamount to saying a man can't be charged with a crime because he is innocent. The fact is, Col. Morton voluntarily paid Mrs. Morton. (Pet.App.21 a).

Ninth, the amicus states Col.Morton had defenses that could control the Alabama litigation. Why should Col. Morton do that

when the Air Force Judge Advocate advised him that the Alabama court had no authority to enter an in personam judgment against him? Too, a military man can only fly space available if he is free to leave his duties. At the time he was acting Commander at Elmendorf Air Base, Alaska, (Res.App. to Brief 10 a) which is the Air Base between the continental United States and Russia.

Tenth, Patricia Kay Morton did not have to file in Alaska to litigate her right to alimony and child support. She can do that through URESA (supra). URESA is a very effective law. The amicus is obviously biased and in favor of a system that permits unilateral deduction of pay of a serviceman without benefit of a hearing as opposed to one that would permit both parties to be heard. Such a position also may result in double payments to a spouse. URESA and 42 U.S.C. 659 et seq., as amended can

exist side by side. Garnishment is fine when the member has been afforded a hearing but URESA should be used when the member has not been given a hearing. The machinery is present in both statutes to provide excellent satisfaction in reaching the object for which they were enacted. However, neither law can eliminate the human factor in the administration of the law.

Eleventh, the Amicus laments that Patricia Kay Morton must support herself and two minor children on $500 a month. The amicus is assuming facts not in evidence because he doesn't know how much Patricia Kay Morton earns. If we are going to assume facts not in evidence, let us assume for the purpose of argument alone, that Patricia Kay Morton left Col.Morton in Virginia in order to go liye with her high school sweetheart who is also in the military; that the eldest child married before he was

18 and the minor child was living with Col. Morton in Alaska and that she didn't marry her childhood sweetheart until the Air Force stopped sending Col. Morton's money to Alabama, although the Air Force continues to withhold his pay, even after both court decisions, which withholdings are now in excess of $31,000.00. The foregoing statements are not all in the record, just as the amicus' are not in the record. (The portion of the claim of Col.Morton finding how much is owed to him in back-pay is not final in this cause.) Would the amicus in assuming the hypothetical posed take the same position he has under his assumed facts? The hypothetical is used merely to point out that not all women are good and being taken advantage of and not all men are bad and take advantage. The law must never operate on that assumption. Neither should court

briefs be written on assumptions. We do not have to assume, however, that the Alabama court, in an ex-parte proceeding in which there was no defense to voice an objection to whatever amount the Alabama court decided was appropriate, awarded Patricia Kay Morton $500.00 per month as alimony and partial child support. What the other part of child support is, counsel cannot possibly speculate. Certainly no defendant would know what to comply with in such an order. Its definition does not appear in the record. Mrs. Morton has been paid three times for the same thing, once when the case was settled in Loudoun County, Virginia, once when Col.Morton voluntarily paid her and once when the Air Force took his pay and gave it to her.

Twelfth, the amicus fails to understand the divisible nature of the proceeding to terminate the marital status and the

proceedings for alimony and child support when he argues the theory of estoppel.

Thirteenth, the amicus also suggests that Col. Morton did not submit himself to the jurisdiction of the Alabama Court because he says the Air Force would have ordered Col.Morton to pay more money to Patricia Kay Morton or he would be discharged from the service. He says Col.Morton has avoided a claim of non-support and prevented an investigation by the Air Force in this manner. The amicus has his facts all wrong again. The Air Force has no authority to set alimony and child support nor order any member to pay any of his debts. In citing Air Force Regulation 35-18, paragraphs 3 and 5 (b),the amicus neglects to mention the paragraph that explains the limitations on the authority of the Air Force and which merely defines policy. The relevant portions of Air Force Regu-

lation 35-18 A.(1) states as follows:

"1. Air Force Policy. The Air Force expects its members to pay their debts on time. Within the limits of available resources, the Air Force provides financial management information, opportunities for education and personal counseling designed to enhance management of personal finances, and takes administrative or disciplinary action in cases of continued financial irresponsibility. Such action is taken to improve discipline and maintain the standards of conduct expected of Air Force personnel, but cannot be used to enforce private civil obligations." (Emphasis added).

"2. Indebtedness.

a) Air Force Enforcement of Private Obligations. The Air Force does not arbitrate disputed debts, admit or deny whether or not the complaints are valid, or confirm the liability of its members. Under no circumstances does the Air Force communicate to complainants, whether any action has been taken against members as a result of complaints. Except for debts owed to the Federal Government, including its instrumentalities (for example, nonappropriated fund activities), the Air Force is not authorized to require a member to pay a private debt or to use any part of his or her earnings to pay the debt, even though the indebtedness may have been reduced to judgment by a civil court. The enforcement of private obligations of Air Force members is a matter for civil authorities." (Emphasis added).

The amicus has totally misunderstood Orrox v. Orr (Lillian M.) 364 So.2d 1170 (1978). Mr. Orr was personally before the Alabama court in the divorce proceeding. Orr v. Orr, (Lillian M. v. William Herbert), Ala.App.351 So.2d 904 (1977); 351 So.2d 906 (S.C.Ala 1977); 440 U.S. 268 (1979). The Alabama Court had continuing jurisdiction over Mr. Orr.

Amicus cites Rock Island Line v. Sturm, (174 U.S.710 (1899) for the proposition that debts belong to the creditors to whom they are payable. That is correct. Col. Morton is the creditor. In stating that a judgment creditor has a right of action against any debtor of the judgment debtor in any forum the judgment debtor could himself have brought suit, has been over-ruled. This is the concept of Harris v. Balk, (supra) that Shaffer v. Heitner, (supra), over-ruled. Further, Patricia Kay

Morton was not a judgment creditor, the judgment being void.

The amicus states that when an obligor moves, under URESA, the obligee is deprived of support. This is not correct. The move of the obligor merely deprives the obligee of the right to have the obligor cited for contempt of court where the obligor resided when the order was entered. However, that order will support a garnishment writ, the obligor having been before the court when the order was entered.

CONCLUSION

The judgment of the Court of Appeals should be affirmed.

Respectfully submitted,
Allan Wayne Morton,

By: Kaletah N. Carroll

Kaletah N.Carroll,
his counsel
4015 Chain Bridge Road
P.O.Box 434
Fairfax, Virginia 22030
(703) 591-4071

CERTIFICATE OF SERVICE

I hereby certify, under penalty of perjury, that on the 10th day of April, 1984, I mailed two typewritten copies of the foregoing Brief on the Merits of the Respondent Allan Wayne Morton, to the Solicitor General of the United States, Department of Justice, Washington, D.C. 20530, postage prepaid and properly addressed.

Kaletah N. Carroll

RESPONDENT'S APPENDIX

1. 5 U.S.C. § 5401, provides in relevant part:

(a)(1) When the head of an agency or his designee determines that an employee, member of the Armed Forces or Reserve of the Armed Forces, is indebted to the United States for debts to which the United States is entitled to be repaid at the time of the determination by the head of an agency or his designee***

(2) *** prior to initiating any proceedings under paragraph (1) .... to collect any indebtedness of an individual, the head of the agency holding the debt or his designee shall provide the individual with -

(A) a minimum of thirty days written notice, informing such individual of the nature and amount of the indebtedness determined ...to be due, the intention of the agency to initiate proceedings to collect the debt through deductions from pay, and an explanation of the rights of the individual ...

(B) an opportunity to inspect and copy Government records relating to the debt;

(C) an opportunity to enter into a written agreement... to establish a schedule for the repayment of the debt; and

(D) an opportunity for a hearing on the determination of the agency concerning

the existence or the amount of the debt*** A hearing*** *** may not be conducted by an individual under the supervision or control of the head of the agency, except that nothing in this sentence shall be construed to prohibit the appointment of an administrative law judge.

2. Uniform Services Former Spouses Protection Act, 10 U.S.C. 1408, provides in part:

Section (a) (1) 'court' means -

(a)"(A)any court of competent jurisdiction of any state***"***

'Court order' means a final decree of divorce*** which -

(A) is issued in accordance with the laws of the jurisdiction of that court; ***

Section (b) (1) service of a Court order is effective if -

(B) "That Court order is regular on its face;"***

***

(D) The Court order or other documents served with the Court order certify that the rights of the member under the Soldiers' and Sailors' Civil Relief Act of 1940 (50 U.S.C. App. 501 et seq.) were observed; and

(2) A court order is regular on its face if the order -

(2) (A) is issued by a Court of competent jurisdiction

(2) (B) is legal in form; and

(2) (C) includes nothing on its face that provides reasonable notice that it is issued without authority of law.

***

"(4) A Court may not treat the disposable retired or retainer pay of a member in the manner described in paragraph (1) unless the Court has jurisdiction over the member by reason of (A) his residence other than because of military assignment, in the territorial jurisdiction of the Court, (B) his domicile in the territorial jurisdiction of the Court or (C) his consent to the jurisdiction of the Court." Emphasis added.

***

(f)(1) The United States and any officer or employee of the United States shall not be liable with respect to any payment made from retired or retainer pay to any member, spouse or former spouse pursuant to a Court order that is regular on its face if such payment is made in accordance with this section and the regulations prescribed pursuant to subsection (h)."

3. Rule 4:2 of the Rules of the Supreme Court of Alabama, 1977, reads in pertinent part:

"PROCESS: BASIS FOR AN METHODS OF OUT-OF-STATE SERVICE.
(a) Basis for Out-Of-State Service:

(1) When proper. Appropriate basis exists for service of process outside of this state upon a person in any action in this state when

(A) the person is, at the time of the service of process, either a non-resident of this state or a resident of this state who is absent from this state, and (Emphasis added)

(B) the person has sufficient contacts with this state, as set forth in (a) 2 of this rule, so that the prosecution of the action against the person in this state or the Constitution of the United States, or ***

(2) Sufficient Contacts. A person has sufficient contacts with the State when that person, acting directly or by agent, is or may be legally responsible as a consequence of that person's ***

(H) living in the marital relationship within this state, notwithstanding subsequent departure from this state, as to all obligations arising from alimony, custody, child support, or property settlement, if the other party to the marital relationship continues to reside in this state; or

(I) otherwise having some minimum contacts with this state and, under the circumstances, it is fair and reasonable to require the person to come to this state to defend an action. The minimum contracts referred to in this subdivison (I) shall be

deemed sufficient, notwithstanding a failure to satisfy the requirement of subdivision (A)-(H) of this subsection (2), so long as the prosecution of the action against a person in this state is not inconsistent with the Constitution of this state or the Constitution of the United States."

4. Letters from James R.Russell to Wayman G. Sherrer and letter from Caryl P. Privett to James R.Russell:

1 June 1977

JA
Morton v. Morton, (Tenth Judicial Circuit Court) No. 186-818

Wayman G. Sherrer
United States Attorney
200 Federal Building
1800 Fifth Avenue North
Birmingham AL 35203

Dear Mr. Sherrer

Enclosed herewith is a copy of a decree of divorce, and attendant thereto, an affidavit for service of process by certified or registered mail.

In short, the Circuit Court entered a decree of divorce which contained a $500.00 per month alimony award based upon this service by certified mail. We are concerned as to whether this procedure secured the requisite "in personam" jurisdiction over Mr.Morton to lawfully support this alimony award.

Our records demonstrate that Mr.Morton was a domiciliary of the State of Alabama and at the time of service by certified mail was in the State of Alaska in Military service. In August 1976, his attorney advised him to change his state of domicile by paying taxes etc. in the new state. The records of the court demonstrate that the return receipt for service of process in the divorce action bore Mr. Morton's signature and was duly returned to the court. The decree of divorce specifically stated that "defendant was duly served".

We are currently in a position where we must determine the viability of this service of process in order to ascertain the effectiveness of a Writ of Garnishment to collect an arrearage for alimony.

Therefore, we respectfully request that you advise us if service of process by certified mail on a nonresident domiciliary of Alabama secures "in personam" jurisdiction so as to authorize the entry of a money judgment as was made herein.

JAMES R. RUSSELL
Office of the Staff Judge Advocate

June 7, 1977

James R. Russell
Office of the Staff Judge Advocate
Department of the Air Force
Headquarters Air Force Accounting
and Finance Center
Denver, Colorado 80279

ATTN of: JA

RE: Morton v. Morton, Tenth Judicial Circuit Court, No. 186-818

Dear Mr. Russell:

Please be advised that under the circumstances as you related them in your letter of June 1, 1977, the service of process by certified mail was sufficient.

The pertinent law is encompassed in the Alabama Rules of Civil Procedure. Rule 4(b) states: "All process may be served anywhere in this state and, when authorized by law or these rules, may be served outside this state." A copy of Rule 4.2 which pertains to basis for and methods of out-of-state process is enclosed, the relevant portions are marked.

If you have any further questions, do not hesitate to contact me.

Very truly yours,

WAYMAN G. SHERRER
United States Attorney

BY: CARYL P. PRIVETT
Assistant United States Attorney

5. Air Force Document defining "Home of Record". See Plaintiff's Reply to Defendant's Reply to Plaintiff's Statement pursuant to Memorandum of Pre-trial Conference. DOD Form 2058, 1 February, 1977, in pertinent part:

"You should not confuse the State which is your "home of record" with your State of

legal residence/domicile.Your "home of record" is used for fixing travel and transportation allowances. A "home of record" must be changed if it was erroneously or fraudulently recorded initially.

Enlisted members may change their "home of record" at the time they sign a new enlistment contract. Officers may not change their "home of record" except to correct an error, or after a break in service.The State which is your "home of record" may be your State of legal residence/domicile only if it meets certain criteria."

6. Letter from Patricia Kay Morton to the Base Commander and letter from the Base Commander to Patricia Kay Morton. (From Exhibits to Objections and Responses to Defendant's Motion for Summary Judgment and Cross-Motion for Summary Judgment):

September 19,1975

The Base Commander
Elmendorf A.F.B.,
Alaska.

Dear Sir:

Enclosed is a copy of the divorce decree awarded me on the 14th of August, 1975. This divorce was un-contested by Col.Allan W. Morton. Col.Morton has failed to send all money set aside by the courts. The decree states I am to receive $500.00 per month beginning the date the divorce was granted. I have received only half the

amount specified by the courts. This amount is to be sent to me by Col.Morton whether or not the children are living with me. Col. Morton owes me $250.00 for the month of August and $250.00 for the month of September. He has also ignored the court cost incurred in the amount of $350.00 payable to Mr. G.W. Nicholson, Attorney. I am asking your help in this matter as I am in a terrible financial bind at this time because of Col. Morton's failure to live up to his obligations to me and to his son Allan, who is living with me. (Our son Bryan is living with Col.Morton). Col. Morton feels that since Bryan is with him, that I should receive only half of the $500.00, but according to the judge and my lawyer, the full amount of $500.00 per month is due me.

If it is possible, could the child support/ alimony be put in an alottment check to protect against Col.Morton's not sending a check each month? I think this could solve that problem.

Also, I would like for Col.Morton to send the proper papers for our son, Allan to have a new I.D. card made, as his expired in August.

I am sorry to have involved you in this matter, but I just didn't know any other way to go.

Allan W.Morton
CES
Elmendorf AFB

Sincerely,
Patricia K. Morton
849 Sherwood For.Dr.
Birmingham, Alabama.

28 Oct 1975

Mrs.Patricia K. Morton
849 Sherwood Forest Drive
Birmingham, Alabama 35275

Dear Mrs.Morton:

I have received your letter of 19 September 1975, along with a copy of Final Judgment of Divorce, dissolving your marriage to Colonel Allan W. Morton of this organization. Please accept my apology for not having replied before now, but the delay was due to the fact that I have been away on temporary duty elsewhere; and in my absence, Colonel Morton, being the next ranking officer in the 21 Air Base Group, assumed my role as Base Commander.

In regard to your request for help in the matter of Colonel Morton not furnishing the entire $500.00 per month set forth in the divorce decree, I referred the question to my Staff Judge Advocate for advice, and after thorough study, he informs me that he does not have enough information to give me an absolutely definitive answer. Specifically, he states that he would need a copy of the petition for divorce; whether personal service was obtained on Colonel Morton within the State of Alabama; and, if not, whether Colonel Morton waived in writing, personal service; and finally, a copy of any separation agreement or property settlement agreement that may have been entered into.

In spite of the above, Colonel Morton is obligated to provide support for his two sons. I am advised that this is so not withstanding that one son is presently

residing with him in the absence of an amended decree or agreement between you and Colonel Morton, allowing him to assume full custody of the child residing with him. By not having the additional information described in the above paragraph it is difficult to determine exactly the amount appropriate. Hence, I must rely on a yardstick using terms such as "ability to provide," "reasonableness," and "station in life." Accordingly, I feel that you are entitled to more than $250.00 per month and have advised Colonel Morton of such. Also, I have informed him of his obligation to furnish you with the appropriate documents to obtain a new ID card for your son, Allan.

It is possible to make support payments by allotment, however, that would have to be done on Colonel Morton's personal initiative as I have no authority to compel him to do so.

I am sorry I do not have the information to be more succinct in my answer, but trust this fully explains the Air Force position in such matters. Too, I sincerely hope that the hardship which you recited will be promptly alleviated to the satisfaction of all concerned.

Sincerely,

JAMES D. DUNN, Colonel USAF
Commander.